IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-289

PRUNEYARD SHOPPING CENTER and FRED SAHADI,

Appellants,

vs.

MICHAEL ROBINS, et al.,

Appellees.

ON APPEAL FROM
THE SUPREME COURT OF CALIFORNIA

BRIEF OF PEOPLE'S LOBBY, INC., AS AMICUS CURIAE, IN SUPPORT OF APPELLEES

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TOPICAL INDEX

	Page
Table of Authorities	ii
INTEREST OF THE AMICUS CURIAE	1
ARGUMENT	3
THE DUE PROCESS CLAUSES OF THE FIFTH AND FOURTEENTH AMENDMENTS DO NOT PRECLUDE CALIFORNIA FROM RECOGNIZING A RIGHT OF ACCESS TO SECURE SIGNATURES ON INITIATIVE PETITIONS CIRCULATED PURSUANT TO THE CALIFORNIA CONSTITUTION	3
CONCLUSION	8

TABLE OF AUTHORITIES

Cases	Page
ALRB v. Superior Court, 16 Cal. 3d 392, cert den. 429 U.S. 802 (1976)	8
Board of Regents v. Roth, 408 U.S. 564 (1972)	7
Diamond v. Bland, 3 Cal. 3d 653 (1970), cert. den. 402 U.S. 988 (1971)	2
Diamond v. Bland, 11 Cal. 3d 331, cert. den. 419 U.S. 1097 (1974)	2, 4
Fair Political Practice Com. v. Superior Court, 25 Cal. 3d 33 (1979), cert. den. ___ U.S. ___ (1980)	2
Hudgens v. NLRB, 424 U.S. 507 (1976)	8
Lloyd v. Tanner, 407 U.S. 551 (1972)	2, 3, 7
Perry v. Sindermann, 408 U.S. 593 (1972)	7

Constitutions

California Constitution, Article IV, Section 1	2
United States Constitution:	
First Amendment	8
Fifth and Fourteenth Amendments	3

Statutes

Supreme Court Rule 42(1)	1
California Elections Code §§29710 to 29791	6

Textbook

Diamond, California's Political Reform Act: Greater Access to the Initiative Process, 7 Southwestern L. Rev. 454 (1975)	2

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INTEREST OF THE AMICUS CURIAE[1/]

People's Lobby is a non-profit California corporation consisting of volunteer citizens who utilize California's initiative process for the purpose of direct legislation. The right of the initiative is guaranteed by Article IV, Section 1 of the California Constitution, which provides as follows,

> "The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum."

To secure the requisite number of signatures on initiative petitions to qualify measures for the ballot, volunteers frequently find it necessary to enter shopping centers, where persons may sign the petitions. Indeed, People's Lobby utilized shopping centers to qualify the Political Reform Act of 1974 for the ballot, which was subsequently approved by California voters. See Fair Political Practices Com. v. Superior Court, 25 Cal. 3d 33 (1979), cert. den. ___ U. S. ___ (1980); Diamond, California's Political Reform Act: Greater Access to the Initiative Process, 7 Southwestern L. Rev. 454 (1975).

People's Lobby is concerned that a decision adverse to appellees herein will destroy the right of the initiative guaranteed by California's Constitution. People's Lobby also filed an amicus curiae brief in Lloyd v. Tanner, 407 U.S. 551 (1972) and in the instant case before the California Supreme Court. In addition, People's Lobby was a party in Diamond v. Bland, 3 Cal. 3d 653 (1970), cert. den. 402 U. S. 988 (1971) and Diamond v. Bland, 11 Cal. 3d 331,

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1/ This brief is being filed with the written consent of all parties. Pursuant to Supreme Court Rule 42(1), these consents are being filed simultaneously with the Clerk of the Court.

cert. den. 419 U.S. 1097 (1974), two prior shopping center access cases. Thus, People's Lobby is extremely interested in the decision in the instant case.

ARGUMENT

THE DUE PROCESS CLAUSES OF THE FIFTH AND FOURTEENTH AMENDMENTS DO NOT PRECLUDE CALIFORNIA FROM RECOGNIZING A RIGHT OF ACCESS TO SECURE SIGNATURES ON INITIATIVE PETITIONS CIRCULATED PURSUANT TO THE CALIFORNIA CONSTITUTION

The instant case does not involve the circulation of initiative petitions pursuant to the California Constitution. The California initiative process is special and must not be lumped together with the distribution of handbills, Lloyd v. Tanner, 407 U.S. 551 (1972) or the solicitation of unofficial petitions. While amicus curiae believes appellees' position is correct, amicus curiae nevertheless wants to make sure that no matter how this Court eventually rules, it will not result in the restriction of the initiative process in California.

California voters, like the voters in twenty other states, enjoy the precious right of the initiative-direct democracy. Access to shopping centers in California is especially important because of the prominent role the modern shopping

center plays in California life. Most residents have abandoned the downtown areas in major California cities in favor of suburban shopping centers. If registered voters cannot be contacted at shopping centers, they cannot be contacted at all. Most apartment buildings prohibit door to door solicitation, and door to door canvassing of private homes, which would not encompass a cross-section of the community, is much too slow.

Justice Mosk, dissenting in Diamond v. Bland, 11 Cal. 3d 331 at 343, recognized the peculiar problems facing initiative petitioners:

> "There is in the instant case an element, not present in any of the authorities cited above, which provides additional support for vindication of plaintiff's rights. Plaintiff sought to collect signatures on an initiative petition and to distribute literature relating to the initiative. Under our Constitution, the power of initiative is reserved to the people (art. IV, §1), and courts are zealous to preserve its unfettered exercise 'to the fullest tenable measure of spirit as well as letter.' (McFadden v. Jordan (1948) 32 Cal. 2d 330, 332 [196 P. 2d 787].) In order to implement this vital policy, we have recognized that it is desirable for initiative measures to reach the ballot without delay or excessive expenditures of time, money and effort. (Gage v. Jordan (1944) 23 Cal. 2d 794, 799 [147 P. 2d 387].)

"Article IV, section 22,[2] of the California Constitution specifies that an initiative petition must be signed by electors equal in number to 5 percent (for a statute) and 8 percent (for a constitutional amendment) of the votes cast for all candidates for Governor at the last election. At the time plaintiff sought to qualify the anti-pollution initiative, more than 500,000 signatures were required; normal attrition dictates that a considerable number in excess of that figure be obtained to assure that the petitions contain 500,000 valid signatures. The Legislature has specified in the Elections Code that proponents of an initiative measure must obtain the requisite number of signatures within a maximum of 150 days from the date the Attorney General delivers the summary of the chief purpose of the measure. (Elec. Code, §§3507, 3520.)

"It seems evident that in order to secure such a large number of signatures in 150 days -- nearly 3,500 every day -- the proponents of a measure must have access to places at which a substantial number of persons congregate on a regular basis. This is particularly true in the case of poorly financed measures

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[2] Now Article II, Section 8.

which must rely upon volunteers rather than upon an army of paid professional canvassers, door-to-door solicitors, and advertising through the media as a means of informing the public of the proponent's views prior to actual solicitation. In order to avoid the possibility that the initiative process will become the captive of well-financed special interest groups, and in view of the long-standing and emphatic expressions of state policy in favor of the full and free exercise of the right of initiative, plaintiff should be accorded the right to solicit signatures on initiative petitions and distribute literature with regard to such measures at the Inland Center."

The time factor is not present when an unofficial petition is being circulated. With an initiative petition the entire campaign fails if the required number of signatures is not obtained in the allotted time. An unofficial petition can be useful even if the number of signatures is less than that originally sought by the sponsors.

Persons circulating initiative petitions are similar in status to deputy voter registrars. The process of gathering signatures on initiative petitions, unlike unofficial petitions, is highly regulated. See California Elections Code §§29710 to 29791. Thus, there is little likelihood that the circulation of initiative petitions would lead to any disruption of the shopping center. If initiative petitions may not be circulated at shopping centers, where they have been for years in California, then

presumably voter registrars could not register voters at shopping centers.

The difference between the circulation of initiative petitions and the distribution of handbills is even greater than the difference between the circulation of initiative petitions and unofficial petitions. This greater difference is significant in view of this Court's decision in Lloyd v. Tanner, supra, which involved the distribution of handbills at a shopping center in Portland, Oregon. There, this Court's five justice majority was concerned about the litter allegedly caused by handbill distribution. Also, this Court's majority noted that the handbillers could distribute handbills to motorists entering the parking lot from a location just off the shopping center premises. Id. at 567. Obviously, one cannot obtain a signature on a petition from a motorist entering a shopping center parking lot.

Factually, therefore, the handbilling in Lloyd is significantly different than circulating initiative petitions.

Constitutionally, the alleged right to handbill at a shopping center is significantly different than the state's right asserted herein, the right to circulate initiative petitions pursuant to the state's constitution. This Court has not rejected the legitimate interests of the states in our federal system. In Board of Regents v. Roth, 408 U.S. 564 (1972) and Perry v. Sindermann, 408 U.S. 593 (1972), this Court held that it is up to the states to define property rights. In view of this, why cannot a state, acting either through its legislative or judicial

branches, declare a right of access for initiative circulation purposes?

This Court has not totally foreclosed access to private property. In Hudgens v. NLRB, 424 U.S. 507 (1976), this Court held that while labor union picketers did not have a first amendment right of access, they could have a right of access under the National Labor Relations Act, a decision hardly consistent with the shopping center's view that property rights under the Fifth and Fourteenth Amendments permit the owner to prohibit absolutely certain activities on its property. See also ALRB v. Superior Court, 16 Cal. 3d 392, cert. den. 429 U.S. 802 (1976).

CONCLUSION

For the foregoing reasons, the Court is requested to affirm the decision of the California Supreme Court or, at a minimum, recognize California's right to establish access to shopping centers for initiative petitioning.

Respectfullysubmitted,

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